SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE

<u>NOTICE OF PROPOSED RULEMAKING</u>

Proposed Adoption of Pa.R.C.P. No. 241

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of Pa.R.C.P. No. 241 governing motions for award of counsel fees for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor will be officially adopted by the Supreme Court.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
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All communications in reference to the proposal should be received by **March 2, 2018.** E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee,

David L. Kwass
Chair

[This is an entirely new rule.]

Rule 241. Motion for Award of Counsel Fees. Timing of Filing.

(a)	A claim for an award of counsel fees authorized pursuant to Section 2503 of the Judicial Code, 42 Pa.C.S. § 2503, shall be made by motion filed within 30 days of:

(1)	a discontinuance as to all claims and all parties pursuant to Rule 229,

(2)	the entry of a final order, or

(3)	the entry of judgment following trial in the trial court.

(b)	The motion shall state:

(1)	the grounds in Section 2503 entitling the moving party to the award of counsel fees, and

(2)	the amount sought or a good faith estimate of it.

Note: *See* Rules 208.1 *et seq.* for the procedure governing motions practice.

Explanatory Comment

The Civil Procedural Rules Committee is proposing the adoption of new Rule 241 governing the time for filing a motion for an award of counsel fees authorized pursuant to Section 2503 of the Judicial Code, 42 Pa.C.S. § 2503. In *Ness v. York Township Board of Commissioners*, 123 A.3d 1166 (Pa.Cmwlth. 2015), the Commonwealth Court recognized that the Rules of Civil Procedure are silent as to when a motion for an award of counsel fees must be filed or adjudicated, and concluded that the trial court does not retain jurisdiction to act on a claim when it is filed more than 30 days after the entry of final judgment. However, as noted by the *Ness* court, under *Samuel-Bassett v. Kia Motors America, Inc.*, 34 A.3d 1 (Pa. 2011), the Supreme Court has held that a trial court retains jurisdiction to adjudicate a motion for an award of counsel fees during the pendency of an appeal.

Subdivision (a) of the new rule requires a party to file a motion for an award of counsel fees within 30 days after a discontinuance as to all claims and all parties pursuant to Rule 229, the entry of a final order, or the entry of judgment following trial in the trial court. As minimum requirements for the content of the motion, subdivision (b) requires the designation of the subsection of Section 2503 that is the basis for the grant of the award of counsel fees, as well as the amount sought or, if not precisely known, a good faith estimate of the amount sought. This rule applies to counsel fees that may be awarded pursuant to Section 2503 only. While the rule imposes a timeline for <u>filing</u> motions for an award of counsel fees, the trial court retains discretion regarding when such motions will be <u>adjudicated</u>: either at the time of the filing of the motion or after an appeal of the case has been concluded.

By the Civil Procedural
Rules Committee

David L. Kwass
Chair